

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JAMES ROBERT FAVINGER

Petitioner,

v.

JAMES T. WYNDER, et al.,

Respondents.

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No. 07-cv-794

ORDER

AND NOW, this __23rd____ day of January, 2008, it is **ORDERED** that upon consideration of the Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254,

- The Magistrate Judge's Report and Recommendation (Doc. #10) is **ADOPTED** and the Petition for a Writ of Habeas Corpus (Doc. #1) is **DISMISSED**.¹
- A certificate of appealability should not issue since, for the reasons set forth in the Report and Recommendation, Petitioner has failed to show that a reasonable jurist could conclude that the Court is incorrect in dismissing the petition.

s/Anita B. Brody

ANITA B. BRODY, J.

Copies **VIA ECF** on _____ to:

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¹ On November 26, 2007, this Court issued an Order giving the Petitioner additional time to file an objection to the Magistrate Judge's Report and Recommendation (R&R) and warning that failure to file objections to the R&R "shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to factual findings and legal conclusions in the R&R as adopted by this Court." (Doc. #11)

Instead of filing an objection, the Petitioner filed a Motion for Equitable Relief under Fed. R. Civ. P. 60(b) (Doc. #12). In that motion, the Petitioner explicitly agrees with the Magistrate Judge's conclusion in the R&R that he "did submit an untimely petition with un-exhausted claims." (Doc. #12, pg. 1) Therefore, the Petitioner has not objected to the Magistrate Judge's R&R, and I adopt it.

I will consider the Petitioner's Motion for Equitable Relief under Fed. R. Civ. P. 60(b) separately.